



U.S. Department of Justice
 Office of Information Policy
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 Washington, DC 20530-0001

Telephone: (202) 514-3642

FEB -9 2012

Mr. Dale B. Adams
 2313 Anvil Drive
 Harrison, AR 72601

Re: Appeal No. AP-2012-01027
 Request No. 1177799
 JGM:SKV

Dear Mr. Adams:

This is to advise you that your administrative appeal from the action of the Federal Bureau of Investigation on your request for access to certain records was received in this Office on January 5, 2012. You have appealed from the FBI's denial of your request for expedited treatment of your request.

In your appeal letter, you assert your request is entitled to expedited treatment pursuant to the first and third standards enumerated in the Department of Justice's regulations. Expedited treatment pursuant to the first standard will be granted where not doing so "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." 28 C.F.R. § 16.5(d)(1)(i) (2011). Under the third standard, you must show that the request involves "[t]he loss of substantial due process rights." *Id.* § 16.5(d)(1)(iii).

After carefully considering your appeal, I am affirming the FBI's action in denying your request for expedited treatment. Regarding the first standard, Congress noted that the "categories for compelling need are intended to be narrowly applied." H.R. Rep. No. 104-795, at 26 (1996). Congress further stated: "A threat to an individual's life or physical safety qualifying for expedited access should be imminent. A reasonable person should be able to appreciate that a delay in obtaining the requested information poses such a threat." *Id.*; see also, e.g., *Cleaver v. Kelley*, 427 F. Supp. 80, 81 (D.D.C. 1976) (criminal defendant, facing possible "loss of freedom or life" in imminent state prosecution, demonstrated "exceptional and urgent need to obtain any and all information that could prove exculpatory"); *Exner v. FBI*, 443 F. Supp. 1349, 1353 (S.D. Cal. 1978) (requester obtained expedited treatment after leak of information exposed her to harm from organized crime figures), *aff'd*, 612 F.2d 1202 (9th Cir. 1980). Based on the information that you have provided, I have determined that you have not met your burden under the first standard. You have not presented any facts that demonstrate how a delay in processing your appeals would pose an imminent threat to the life or physical safety of any individual. Without such proof, expedited processing pursuant to the first standard is not warranted.

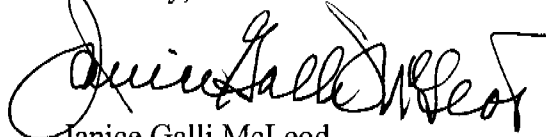
Regarding the third standard, courts have held that requests for expedited treatment for due process reasons generally should not be granted unless a requester shows that he is "facing grave punishment" in a pending criminal proceeding and that "there is a reason to believe that the information produced will aid in the individual's defense." *Aguilera v. FBI*, 941 F. Supp. 144,

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150 (D.D.C. 1996). Based on the information that you have provided, I have determined that you do not meet this test because you have not demonstrated that the information sought will aid in any criminal defense, or that you are facing grave punishment. Without such a showing, expedited treatment pursuant to the third standard is not warranted. Accordingly, the FBI properly denied your request for expedited treatment under the third standard.

If you are dissatisfied with my action on your appeal for expedited treatment of your request, you may file a lawsuit in accordance with 5 U.S.C. § 552(a)(6)(E)(iii).

Sincerely,

A handwritten signature in black ink, appearing to read "Janice Galli McLeod", written over a horizontal line.

Janice Galli McLeod
Associate Director